IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINATING SUMMONS NO.1406 OF 2006
IN
ORIGINATING SUMMONS SUIT NO.3065 OF 2006(OS)

Khojeste Mistree & Ors. ...Plaintiffs
Vs.
Bombay Parsi Punchayet & Ors. ...Defendants

Dr. V. Tulzapurkar, Sr. Advocate with Mr. Kirti Munshi Mr. Sharan Jagtiani, and Mr. Solomon Advocates i/b. Mr. Nana Yelkar for Plaintiffs

Mr. I.M. Chagla with Mr. Darius Khambhata, Mr. Shyam Mehta, Mr. Parag Kabadi and Ms. Falguni Thakkar Advocates i/b. Dojode Associates for Defendant Nos.1 to 7 and Sr. No.4 Mr. Niranjan Pandit, AGP for Defendant No.8

CORAM: SMT. ROSHAN DALVI, J.
DATED: 8TH FEBRUARY, 2007

P.C.

1. The Plaintiffs seek answers to 3 questions for interpretation of the scheme for election of the Trustees of the funds and immovable properties of the Parsi Punchayat of Bombay (the Scheme). This Originating Summons has been taken out under Chapter XVII, Section 238 of the Bombay High Court Rules. The Plaintiffs are the persons claiming to be interested as beneficiaries under the Trust

functioning as per the Scheme. The questions raised by the Plaintiffs are stated to effect the rights and interest of the Plaintiffs as the beneficiaries of the Trust and are required for determination of the questions arising in the administration of the Trust. Defendants 2 to 7 are the Trustees of Defendant No.1. Defendant No8 is the Charity Commissioner, the competent authority under the Bombay Public Trust Act, 1950 (BPT Act).

2. It is argued on behalf of the Defendants that in view of Section 80 of the BPT Act, this Court would have no jurisdiction to answer the questions in the Originating Summons. The contention is misconceived as no Originating Summons arising for questions to be determined under Rule 238 of the Bombay High Court Rules is barred under the said Section. Only a Civil Courts jurisdiction to decide and deal with any question arising under the BPT Act, which can be decided by an Officer or Authority under the Act, is barred. The Officer or Authority under the Act cannot interpret the Scheme or decide any question effecting the right or interest of the beneficiary of the Trust or a question arising in the administration of the Trust. The decision relied upon by the Defendants in the case of Church of North India Vs. Lavajibhai Ratanjibhai and Ors. (2005) 10 SCC, 760 and Vinod Kumar Mathurseva Malvia & Anr. Vs.

Maganlal Mangaldas Gameti & Ors. 2006(2) SCALE, 625 do not apply to Originating Summons. They apply to a Suit filed in a Civil Court, relating to the interpretation of the provisions of the BPT Act which is within the exclusive jurisdiction of the Authorities thereunder. Hence the Court's jurisdiction in an Originating Summons is not barred. The Questions raised by the Plaintiffs must therefore be answered.

3. Defendants 3,4 and 5 who are the Trustees of the Trust, addressed a joint letter of resignation dated 19th June, 2006 to Defendant No.2 as the Chairman of the Trust tendering their resignation **"forthwith"**.

4. The Defendant No.2 is stated to have accepted the said resignation and also forwarded his own resignation with immediate effect to Defendants 6 and 7 with a copy to Defendant No.8 by his letter dated 20th June, 2006.

5. The extract of the letter of Defendant No.2 addressed to Defendants 3,4 and 5 was published in the Community Newspaper on 25th June, 2006. The letter of Defendants 2 to 5 dated 21st June, 2006 came to be published in the Community Newspaper on 9th July, 2006 titled as "BPP TRUSTEES RESIGNATIONS".

6. Thereafter a joint statement from the Trustees of the said Trust showing the unconditional withdrawal of their resignations was given by way of Public Notice on 9th July, 2006.

7. It is contended on behalf of the Plaintiffs that the Defendants 2 to 5 have resigned and their resignations having came in to effect, their act of resigning is complete and cannot be retracted or withdrawn. It is therefore, contended that they ceased to be Trustees on and from the date when they tendered their respective resignations. It is therefore, contended that their office fell vacant on and from such date and they cannot thereafter withdraw their resignations and rejoin the Trust.

8. Mr. Tulzapurkar on behalf of the Plaintiffs relied upon Clauses 39,49, 56, 61 and 88 of the aforesaid scheme as amended by order dated 6th January, 1993, which is at present in force. They relate to the mode of tendering resignations by the Trustees of the Trust and its effect.

9. The Plaintiffs have framed 3 questions to be answered by the Court in this Originating Summons upon interpretation of the Scheme. These essentially relate to the

effect of the resignations tendered by the Trustees of the Trust. The aforesaid questions that have been raised in this Originating Summons are answered as follows :

(i) Whether under the provisions of the Scheme including Clause 61 read with Clause 49 (g) of the Scheme for the election of Trustees of the Funds and Immovable Properties of the Parsee Punchayat of Bombay (Exhibit "B" hereto), Defendant Nos.3,4 and 5 have vacated their office as Trustees of the 1st Defendant Trust on submission of their resignation contained in the Letter of Resignation dated 19th June, 2006 (Exhibit"C" hereto) ? **NO**

(ii) Whether under the provisions of the Scheme including Clause 61 read with Clause 49 (g) of the Scheme for the election of Trustees of the Funds and Immovable Properties of the Parsee Panchayat of Bombay (Exhibit "B" hereto), Defendant No.2 has vacated his office as Trustee of the 1st Defendant Trust on submission of his resignation contained in the Letter of Resignation dated 20th June, 2006 (Exhibit "D" hereto)? **NO**

(iii) Whether after submitting resignations as Trustees effective from a specified date, it is permissible for Defendant Nos.2 to 5 who were elected and appointed by the Anjuman Committee as Trustees of the 1st Defendant, to rejoin the Board of Trustees of the 1st Defendant by withdrawing their resignations? **Does not arise**

R E A S O N S

10. Question Nos. 1& 2:- Under Clause 39 of the aforesaid Scheme the resignations by the Trustees has to be by way of a letter in writing to the Trust. It comes into affect from the date of the receipt of such letter by the Trustees. This provision in the Scheme is clear, concise, precise and accordingly each word in the clause is required to be given effect to.

11. The letter of resignation by a Trustee has therefore to be addressed to and received by all the Trustees. It cannot be addressed to one or some of them. The letter of Defendants 3,4 and 5 was addressed to and received by the Defendant No.2. The letter of Defendant No.2 was addressed to and received by Defendants 6 and 7. Neither of these letters has been addressed to or received by **"*the Trustees*"**. The clear and explicit provisions in the clauses are therefore not complied by any of these Trustees. The resignation letters, not having been written to and accepted by the Trustees, are not in accordance with the mandate of the Scheme. They are consequently no resignation letters under which their intention can be effectuated.

12. It is contended on behalf of the Plaintiffs that the letters of Defendants 3,4 and 5 were received by Defendant No.2, who is the Chairman of the Trust who received it in such capacity and accepted it as such and hence they were correctly sent and received. A Trust functions with the Trustees. Each of the Trustee has equal rights, duties, powers and responsibilities. The concept of a Chairman of the Trust is unknown to law. Unless the Scheme specifically makes any provision for either any additional powers, duties, rights or responsibilities to any one of the Trustees as the Chairman of the Trust, no Trustee can assume to himself an added position of such Chairman. No such specific or express provision in the scheme is shown to Court. Besides it is no part of the function of the Chairman to do the ministerial act of forwarding resignations of some trustees to the other trustees.

13. The Defendant No.2 is stated to have forwarded his own resignation letter to the other 2 Trustees but not to Defendants 3,4, and 5. There is no provision in the Scheme for a Chairman, who is also one of the Trustees, to address his resignation letter to 2 of the Trustees with a copy to the Charity Commissioner and consequently even the resignation letter of the Defendant No.2 suffers from a similar non-compliance of the clear and specific provision

contained in Clause 39 of the Scheme. Neither are these letters written to all the Trustees nor are they accepted by all the Trustees.

14. This aspect came to the notice of the Plaintiffs upon its publication in the Community Newspaper on 25th June, 2006. It is therefore, contended on behalf of the Plaintiffs that the aforesaid 2 publications impute knowledge upon the other Trustees of the resignations of their colleagues and consequently is sufficient compliance with Clause 39 of the Scheme. Clause 39 of the Scheme is in respect of the right to resign and the effect of such resignation. Unless the specific provisions are followed or complied no act or intention of the resignations can be effectuated.

15. It is further contended on behalf of the Plaintiffs that upon the resignations so tendered the Defendants 2 to 5 who are members of the Anjuman Committee, have ceased to be so. This ceasation of membership follows as the corollary to the resignations being correctly tendered. If the resignations suffer from any defect or irregularity and cannot be effected the membership of the committee cannot cease. Consequently the further argument that upon such ceasation of membership a vacancy arose in the Anjuman Committee also falls. The reservations are irregular and

hence, the Trustees being Defendants 2 to 5 have neither ceased to be members of the Anjuman Committee nor has any vacancy arisen consequent upon their letters to some of their colleagues. None of them has, therefore, vacated his Office as Trustees of the first Defendant Trust. The set of Authorities relied upon by the Plaintiffs need not be adverted to as they are completely extraneous to the narrow ambit of this Originating Summons except the case of Motiram Vs. Param Dev and another (1993) 2 SCC, 725 in which the ruling that the resignation which is sought to be effectuated on the date of the letter of resignation itself would take effect on the same date is an accepted position in law. It does not require the resignation to be accepted by the authority receiving the letter of resignation. In this case also had the letters of resignation been sent by the Trustees and received by them they would have taken effect upon the receipt itself. That receipt is required to be of the letter and not by acquiring knowledge from a newspaper or any other publication. Since the letter itself was neither sent nor received, no further questions need arise. Consequently the answers to both the questions are in the negative.

16. Question No.3:- The joint statement from Defendants 2 to 7 issued by way of a Public Notice on 29th June, 2006 shows that Defendants 2 to 5 have been prevailed over and

accordingly have withdrawn their resignations and agreed to rejoin the Board. However, since their letters of resignations have not been tendered according to the mandate contained in clause 39 of the Scheme, the question of rejoining does not arise. The question, therefore, need not be answered.

(SMT.ROSHAN DALVI, J.)